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10/700,582	11/05/2003	Calvin Lee Mitchener	1818-1	7592

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Clifton T. Hunt, Jr.  
#705  
4812 Six Forks Road  
Raleigh, NC 27609

EXAMINER

OKEZIE, ESTHER O

ART UNIT PAPER NUMBER

3654

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/700,582

Applicant(s)

MITCHENER, CALVIN LEE

Examiner

Esther O. Okezie

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 2, 3, and 12 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
2. Regarding claim 2, Claim 1 recites "Apparatus for cleaning gutters" in line 1 while claim 2 recites "The invention of claim 1" in line 1. There is insufficient antecedent basis for this limitation in the claim.
3. Regarding claim 3 no functional relationship of the scoop is given to relate it in some manner to the apparatus of claim 1. In short, it is unclear how the scoop should be included.
4. Regarding claim 12, claim 11 recites a method and the dependent claim 12 recites "the invention." There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Vernon et al. Vernon et al. discloses an apparatus capable of cleaning gutters comprising a rod (12), a rake (16), attached to one end of the rod, and a hoe (48) attached to the end of the rod. It is noted that the applicant is claiming the subcombination of an apparatus for cleaning gutters supported by spikes and not the combination of an apparatus and gutters supported by spikes.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Konyn et al. Konyn et al. discloses an apparatus capable of cleaning gutters comprising a rod (10), a rake (11), attached to one end of the rod, and a hoe (12) attached to the end of the rod.

3. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Atkinson.

4. Regarding claim 1 Atkinson discloses an apparatus capable of cleaning gutters comprising a rod (12), a rake (20, 30, and 40), attached to one end of the rod, and a hoe (14) attached to the end of the rod.

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5. Regarding claim 3 Atkinson discloses the apparatus of claim 1 including a scoop (52)

6. Claims 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Jordan.

7. Regarding claim 9 Jordan discloses a rod a rake capable of cleaning gutters, comprising a shaft extending axially from one end of the rod (12), a center tooth (4) and two side teeth (2 and 3), the center tooth extending in axial alignment from the shaft and the two side teeth extending from the shaft in diverging relation to the center tooth, each of the teeth terminating in a downturned end portion (13), the downturned end portions of the side teeth being spaced from each other a distance to provide the rake a width in conformity with the width of a gutter (the side teeth are adjustable; figure 3) , and the downturned end portions of the teeth being of a length sufficient to rake pine straw and other debris along a gutter and beneath spikes during manipulation of the rod and rake (see figures 1 and 3).

8. regarding claim 10 Jordan discloses the apparatus of claim 9 wherein each downward end portion terminates in a lip (13 and 14)

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to

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be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2,4,5,7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atkinson in view of Eatmon.
10. Regarding claim 2 Atkinson discloses the apparatus of claim 1 but does not disclose a telescopic rod. Eatmon discloses a garden implement including a telescopic rod (26). Atkinson and Eatmon are of analogous art because the both involve yard implements for clearing debris and leaves. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the rod of Atkinson to include telescopic adjustment in order to increase the reach of the user in collecting yard debris.
11. Regarding claims 4 and 7 Atkinson discloses the apparatus of claim 1 but does not disclose a short rod for cleaning gutters. Eatmon discloses an adjustable implement that can be shorted by the use of a telescopic adjustment. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Atkinson so that the rod can be shorted in order to collect smaller areas of yard debris within corners or other small areas of reach.
12. Regarding claim 8 Atkinson discloses the apparatus of claim 7 in view of Eatmon. It would have been obvious to one of ordinary skill in the art to design the width of the rake and hoe to correspond to whatever structure the apparatus is to be used to clean, whether gutters, gardens, or lawns.

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13. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Atkinson in view of Chisholm. Atkinson discloses the apparatus of claims 1 and 3 but does not disclose a scoop separate from the apparatus that is dimensioned to fit within gutters and beneath the spikes of gutters. Chisholm discloses a gutter cleaning scoop with flexible walls for fitting into variable sized gutters, furthermore the scoop forms a tongue which is able to fit under spikes attached to the gutter (column 1, lines 25-40); it would be obvious to one of ordinary skill in the art at the time of the invention to design a scoop dimensioned to fit within gutters and beneath spikes as taught by Chisholm.

14. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Kilpatrick. Smith discloses a rod supported gutter-cleaning tool capable including a ladder that is capable of being used to perform the method. Smith, however, discloses a scoop not a rake. Kilpatrick discloses a rake member (8) for cleaning gutters. It would have been obvious to one of ordinary skill in the art at the time of the invention to include in the invention of Smith a rake in order to pierce leaves and debris and effectively collect them from gutters. Accordingly the combination of Kilpatrick and Smith teaches a method comprising the steps of:

a) providing a ladder of sufficient length for the workman to stand on the ladder with his waist at the gutter when the ladder is positioned on the ground beneath the gutter and leaning against the gutter at a desired angle;

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b) providing a rod with a rake secured to one end of the rod, and  
c) the workman grasping the rod and rake and positioning himself on the waist portion of his on the ladder to face the gutter it body at the same height as the gutter and the workman then manipulating the rod and rake to drag debris in the gutter on one side of the ladder within reach of the workman, and the workman then manipulating the rod and rake to drag debris in the gutter on the other side of the ladder within reach of the workman.

15. Regarding claim 12 the combination of Kilpatrick and Smith teaches the method of claim 11 wherein the workman's manipulation of the rod and rake to drag debris in the gutter on both sides of the ladder within reach of the workman includes the following steps:

a) the rod is rotated to turn the teeth of the rake up to a glide position before pushing the rake away from the ladder to a desired position in the gutter to begin dragging in debris on one side of the ladder;  
b) the rod is rotated to turn the teeth position before pulling the rake debris on said one side of the ladder; of the rake down to a raking toward the ladder to drag in  
c) the rod is rotated to turn the teeth of the rake up to a glide position before pushing the rake away from the ladder to a desired position in the gutter to begin dragging in debris on the other side of the ladder; and



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d) the rod is rotated to turn the teeth of the rake down to a raking position before pulling the rake toward the ladder to drag in debris on said other side of the ladder (see figures 1A and 1B of Smith).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (703) 305-0433. The examiner can normally be reached on Mon-Fri 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine A Matecki can be reached on (703) 308-2688. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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KATHY MATECKI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600